under the Ordinance, and I do not think it can be said to be complied with unless it is clear either on the face of the proceedings or as a matter of reasonable inference that the Public Prosecutor ... has either taken an active part in the prosecution or has consented to the charges brought against the accused after applying his mind at the lowest to the *facta probanda* forming the material of these charges."

The same learned judge in the subsequent case of *Lyn Hong Yap* v. *Public Prosecutor*,[3] referring in his judgment to this very same passage said:

"In making these observations I was concerned with the particular facts of the case under appeal and my attention had not been invited to *Metz's* case. On further consideration I have come to the conclusion that in making these observations I went too far and that they would more accurately state the law if the words, 'either on the face of the proceedings or as a matter of reasonable inference' were omitted."

I respectfully agree with this last observation of Thomson J. This means that the evidence regarding the consent must be such that it should be clear from it, as to the facts of which particular case, the Attorney-General had applied his mind and given his consent. It is not sufficient to prove this fact merely as a matter of reasonable inference.

Reference was also made to the case of *Public Prosecutor* v. *Choy Kok Kuan*[4] both in the hearing before me as well as in the court below. The judgment in this case was based on the earlier remarks of Thomson J. in the case of *Chong Tuck Loong* v. *Public Prosecutor* to which I have already referred above and therefore does not require any further comment now having regard to the subsequent observations of Thomson J. on the same matter.

Let me next refer to the case of *Gokulchand Dwarkadas Moraka* v. *The King*.[5] In that case G. D. Moraka was charged with an offence under the Cotton Cloth and Yarn (Control) Order (1943) in Bombay, and under that Order a sanction from the Provincial Government was necessary to institute a prosecution. The sanction of the Provincial Government was in the following terms: —

"Government is pleased to accord sanction under Cl. 23, Cotton and Yarn (Control) Order, 1943, to the prosecution of Mr. Gokulchand Dwarkadas Moraka for breach of the provisions of cl. 18(2) of the said Order.

By Order of the Governor of Bombay,
(Signed)
Deputy Secretary to Government, Bombay."

There too as it was not clear from the face of the written sanction in reference to the facts of which particular case the sanctioning authority had given its sanction, extraneous evidence was necessary to prove that fact. The Privy Council there held that whatever extraneous evidence that was available on the records was insufficient to establish that the sanction of the sanctioning authority was obtained in relation to the facts of that particular case.

No doubt *Moraka's* case was in respect of a sanction and the present case is in respect of a consent but the underlying principle in question in both the cases remains the same. The learned district judge was right in following the decision in *Moraka's* case regarding this matter.

I find that the written consent, P1A, of the Attorney-General does not, on the face of it, show in reference to the facts of which particular case that consent, P1A, was given. Whatever additional material that is available on the records here is to my mind insufficient to show that the Attorney-General's consent contained in P1A was given in relation to the facts of the present case. That being so the prosecution here has failed to prove that it has complied with the provisions of section 31 of the said Ordinance The learned district judge was right in granting an order of discharge not amounting to an acquittal in respect of the first respondent.

This appeal is dismissed in respect of the first respondent.

For similar considerations, the appeal in respect of the second respondent is also dismissed.

Appeal dismissed.

YEO LONG SENG v. LUCKY PARK (PTE) LIMITED

[O.C.J. (Winslow J.) November 13, 1970]

[Singapore — Suit No. 465 of 1970]

Land Laws — Sale of land by developer — Payment of booking fee — Receipt issued for booking fee — No formal contract — Developer refusing to proceed with sale — Whether enforceable contract — Housing Developers (Control & Licensing) Ordinance, 1965 and the Housing Developers (Amendment) Rules 1967 — Statute of Frauds.

Housing and Development — Housing developers — Contract — Specific performance — Damages.

On September 18, 1969, the plaintiff agreed to purchase a piece of land with a semi-detached house to be built on it, for $52,000 from the defendant who were licensed developers. The plaintiff paid a deposit of $500 for which the defendants issued a receipt in the following forms: "Received from Mr. Yeo Long Seng the sum of $500 being booking fee for the purchase of P/Lot 16 Phase III Lucky Park." On the same day the plaintiff was asked to sign a letter addressed to the defendants which letter contained the terms of instalment payments to be made by the plaintiff to the defendants and which ended with the following paragraphs:- "I hereby agree to sign the agreement within 14 days on receipt of the vendor's notice for signing same; failing which the vendor is entitled to cancel this booking and re-sell the property. I further confirm and agree that the completion date of handing over of house with vacant possession is expected to on or before 31.12.1971."

By a registered letter dated September 19, 1969 addressed to the plaintiff, the defendants purported to inform the plaintiff that his booking was cancelled and they sent a cheque for $500 to the plaintiff as refund of the deposit which he had paid. The plaintiff through his solicitors, returned the cheque informing the defendants that he wished to proceed with the purchase.

In this action the plaintiff claimed for specific performance of the contract and in the alternative for damages for breach of contract. For the plaintiff it was contended that the receipt issued by the defendants for the deposit taken together with the letter of the same date which the plaintiff was asked to sign and hand over to the defendants constituted sufficient written memorandum for the purpose of the Statute of Frauds and accordingly there was a contract at common law. The defendants however claimed that they merely granted the plaintiff an option to purchase a house to be built and that such option was subject to a formal contract of sale in the form given in the Housing Developers (Amend-

ment) Rules 1969 and that they had validly revoked the option.

Held: (1) the receipt taken together with the letter sent by the plaintiff on September 18, 1969 constituted sufficient memorandum under the Statute of Frauds for the purpose of a contract at common law and accordingly there was an enforceable contract which was not made subject to a formal contract;

(2) the Housing Developers (Control and Licensing) Ordinance, 1965 and the Rules made thereunder are intended to control developers and to protect *bona fide* purchasers;

(3) the defendants were accordingly in breach of the contract but as damages could provide an adequate remedy the court would not decree specific performance. Damages assessed at $12,000.

Cases referred to:-

(1) *Von Hatzfeldt-Wildenburg* v. *Alexander* [1911-13] All E.R. Rep. 148.

(2) *Winn* v. *Bull* (1877) L.R. 7 Ch. D. 30.

(3) *Griffiths* v. *Young* [1970] 3 W.L.R. 246, 253, C.A.

CIVIL SUIT.

Kirpal Singh for the plaintiff.

Edward Loke for the defendants.

Cur. Adv. Vult.

Winslow J.: The plaintiff is a merchant and the defendants are land and housing developers known as Lucky Park (Pte.) Limited. On 18th September 1969, according to the plaintiff, he entered into a contract to purchase from the defendants for $52,000 a piece of land with a semi-detached house to be built thereon by about the end of December, 1971 at Lucky Park Estate, Annamalai Avenue, Singapore.

It is undisputed that a receipt signed on behalf of the defendants as at Ex. AB1 was issued to the plaintiff on that date as follows:

"Singapore, 18/9/69

RECEIVED from Mr. Yeo Long Seng the sum of Dollars Five hundred only being booking fee for the purchase of P/Lot No. 16, Phase III, Lucky Park.

$500/- Signed.

Cheque OUB AA.221086 Collector"

At the same time, a letter, AB2, signed by the plaintiff agreeing to certain terms as follows was delivered to the defendants at their office: —

"PHASE III

re: P/Lot No. 16, (Type B) 2-Storey Semi-Detached House, approx. Land Area: 3423 sq. ft. at Lucky Park Estate, Annamalai Avenue, Singapore

I, the intending purchaser of the above property hereby agree and confirm to purchase the above property under the following terms and conditions —

1)	purchasing price of land & house is	$52,000.00
2)	payments of the purchase price are to be made as follows:—	
a)	i) booking fee	500.00
	ii) on signing of agreement	4,700.00
b)	on completion of foundation work ...	5,200.00
c)	on completion of R.C. framework ...	7,800.00
d)	on completion of brickwalls with door & window frames in position ...	7,800.00
e)	balance from mortgage loan (repayable within 10 years with usual interest) on completion and handing over building with vacant possession ...	26,000.00
		$52,000.00

I, hereby agree to sign the agreement within 14 days on receipt of the vendor's notice for signing same; failing which the vendor is entitled to cancel this booking and resell the property.

I further confirm and agree that the completion date and handing over of house with vacant possession is expected to on or before 31.12.1971."

This letter signed by the plaintiff was handed to the defendants and a copy of it was retained by the plaintiff. There can be little doubt that the signing of this letter incorporating the terms and conditions of purchase was not an unilateral act by virtue of its signature by the plaintiff but one which followed an offer to sell on those terms by the defendants. It will be observed that both the letter and the receipt are dated 18th September, 1969 and that the receipt of the booking fee of the particular lot in question signed by the defendants is so contemporaneous with the agreement to purchase signed by the plaintiff as to be an act on the part of the defendants binding them to the terms of the letter delivered to them in acceptance of a prior offer to sell on those terms. The receipt was not given in *vacuo* but was given, to my mind, in solemn acknowledgment of AB2 in accordance with the requirements of paragraph 2(a)(i) thereof, thereby giving the plaintiff a right or option to purchase the property.

A registered letter dated 19th September, 1969 was received by the plaintiff as follows: —

"re: P/Lot No. 16 — Lucky Park

We refer to your booking fee paid in respect of your intending purchase of the above property on 18th September, 1969.

We regret we are not, under circumstances, proceed with the sale at this instance and herewith we refund you cheque (Asia Commercial Banking Corporation Ltd. No. AS/P 320390) the sum of $500 being the cancellation of your booking of the above.

Kindly acknowledge receipt."

It is significant that the cheque for $500 sent by the defendants in cancellation of the booking fee is not a cheque issued by the defendants at all.

On 22nd September the plaintiff replied through his solicitors to the defendants returning the cheque informing them that the plaintiff did not wish to withdraw from the contract and asking the defendants to proceed with the contract.

The plaintiff says that all along he has been ready and willing to carry out the contract and he therefore claims in the alternative, specific performance, an injunction to restrain the defendants from selling to anybody else, damages to be assessed for refusal to perform the contract as well as costs.

On the other hand, the defendants say that on 18th September, 1969 when the defendants accepted the booking fee of $500 they merely granted the plaintiff an option to purchase a house to be built on the particular lot in question and the defendants further contend that such option to purchase was subject to a formal contract of sale to be drawn up, approved by the controller of housing and signed by both the parties which the plaintiff in his letter, AB2, had agreed to sign within 14 days on receipt of the vendor's notice failing which the vendor was entitled to cancel the booking fee and resell the property.

The line of defence is that by their letter dated 19th September, 1969 addressed to the plaintiff the defendants had revoked the option to purchase given to the plaintiff and that the defendants are still willing to refund the $500 to the plaintiff which the plaintiff has refused to accept. This raises the question as to the nature of the option to purchase the defendants claim to have conferred on the plaintiff by virtue of their acceptance of the booking fee paid by the plaintiff on 18th September, 1969 as a result of his letter, AB2.

This brings me now to the fundamental issue between the plaintiff and the defendants.

On 18th September, 1969, having obviously been attracted by the brochure and perhaps by inspection of the land in question and discussion of terms with the defendants, the plaintiff agreed to buy this particular lot and paid the booking fee of $500 which was the maximum deposit he was then required to pay according to law. On the same day he also signed the document AB2.

It is the contention of the plaintiff that between these 2 documents, both dated the same day, —

(1) the letter, AB2, which he was required to sign by the defendants and

(2) AB1, the receipt for the booking fee,

there was a sufficient note or memorandum of a binding contract at common law between them.

The defendants on the other hand contended before me forcefully that these documents are insufficient to create a legally binding contract at common law although they did not plead in their defence that these documents were not a sufficient note or memorandum of a binding contract at law. The defendants contend that only after the signing of an agreement as set out in the Schedule to the Housing (Developers) Rules, 1968 referred to in rule 9A thereof could there be a legally binding contract at law and that what the plaintiff signed was not sufficient even though it was accompanied by AB1, the receipt for the booking fee of $500 referred to in Ex. AB2.

Although neither AB1 nor AB2 say anything about the whole matter being "subject to formal contract", counsel for the defendants contended that, on the basis of these 2 documents, even if they did not expressly say so, the conclusion of a legally binding contract between the parties was subject to a formal contract, in other words, subject to the agreement set out in the Schedule to the Rules.

The answer to this argument seems to me that there is nothing in AB1 and AB2 which subjects the agreement between the parties to any further contractual terms yet to be agreed. It may well be that a formal agreement in accordance with the agreement set out in the schedule was required by law but the important question is that there was nothing in the agreement under the Rules (which the plaintiff had agreed to sign when presented) to which the plaintiff took or intended to take any objection.

It is clear from Ex. AB2 that he was prepared to sign any agreement which was placed before him so long as it had the approval, where necessary, of the controller of housing. He did not say in Ex. AB2 that he reserved any right to amend, add to or alter the terms which on 18th September, 1969 as embodied in Ex. AB2 had already been agreed between the parties.

The form of the agreement prescribed by the schedule to the rules was designed not so much to protect the vendor as to protect the purchaser and, so long as there was conformity with the particular form set out in the schedule, the controller of housing would and could not have raised any objection.

The object of the Ordinance and Rules made thereunder is to control developers and to protect *bona fide* purchasers. If, therefore, a purchaser had agreed in a document such as AB2 to purchase a particular lot in question from the defendants according to the terms set out in that document, having paid a booking fee of $500, which the law has seen fit to provide as the only amount which a vendor could demand as a first deposit, and if all that remained to be done by the purchaser was to sign a document as required by the Rules, I find it difficult to understand how any complaint can be made that when the plaintiff or anybody in his situation signed the document after, at the same time, having paid the booking fee, there was no legally enforceable contract at common law, at least, between the parties.

Anybody in the position of the plaintiff after 18th September, 1969 would have been entitled to conclude that a legally binding contract existed with the defendants or at least an irrevocable option to purchase the particular lot in question as agreed. Both parties entered on 18th September, 1969 into a solemn binding arrangement whether one looks at it from the point of view of a legally enforceable contract at common law or as an irrevocable option to purchase. I find it difficult to comprehend how it can fail to be one or the other, if not both.

In the circumstances, it seems to me that the letter written by the defendants cancelling the booking was inexcusable. That letter which I have already set out in full earlier brusquely informed the plaintiff that the vendors had changed their minds without the courtesy of any explanation for their arbitrary action.

It would be farcical if the defendants were, having regard to the undisputed facts before me, to be held to be free the day after accepting a booking fee in circumstances such as these, to return that booking fee and to cancel the solemn arrangement existing between them without any explanation whatsoever except that "We regret we are not, under circumstances, proceed with the sale at this instance..." as they stated in their letter when they purported to return the booking fee to the plaintiff.

It seems to me that the day after the conclusion of the arrangement between the parties, on 18th September, 1969, the defendants suddenly found that the land had shot up considerably in price overnight, so to speak. It suited their book accordingly to take advantage of the changed situation and cancel the booking as hastily as possible without consulting their solicitors.

The plaintiff was prepared to sign any agreement required under the Rules. He did not say "subject to my signing the agreement required under the Rules". He said "I will sign it when you produce it." At the same time he said "If I don't sign it within 14 days you can regard the booking as cancelled." The right therefore on the part of the vendors to terminate the contract already agreed on 18th September, 1969 could only have arisen on the submission of the agreement incorporating the terms already agreed on 18th September 1969 in a form in accordance with the Rules, and it would only have been after he had refused to sign such a document within 14 days that the defendants would have been entitled to cancel the booking in question.

It may well be said that conveyancing practice recognises a formal contract of sale concluded in the usual form and in accordance with the usual conditions of sale as being part of the normal machinery or procedure preceding a conveyance of land. The agreement in the schedule now takes the place of the formal contract required in the case of sales by developers. This, however, is far from saying that there can never be any contract at common law if all the agreed terms between the parties are incorporated in correspondence or in some other way sufficient to constitute a sufficient note or memorandum evidencing agreement leaving no other term to be yet agreed. As Parker J. said in *Von Hatzfeldt-Wildenburg* v. *Alexander*[1]:

"... it is a question of construction whether the execution of a further contract is a condition or term of the bargain, or whether it is a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through."

Jessel, M.R. expressed very much the same view in *Winn* v. *Bull*[2]:

"... If in the case of a proposed sale or lease of an estate two persons agree to all the terms and say, 'We will have the terms put into form,' then all the terms being put into writing and agreed to, there is a contract."

In *Griffiths* v. *Young*[3] it was held that the words "subject to contract" are not a term of a contract at all once one finds that an unconditional contract in fact exists in correspondence between the parties.

In the present case no such words as "subject to contract" or "subject to formal contract" occur anywhere in AB1 and AB2 and I have dealt with the matter only because counsel for the defendants saw fit to argue the matter on the basis that a conditional contract alone was evidenced by these documents and then proceeded to cite cases relating to the expression "subject to contract" when no such provision was ever within the contemplation of the parties.

It is clear that the defendants intended to bind the plaintiff when they took delivery of Ex. AB2 signed by him. They issued a receipt in conformity with its terms for the first payment intending to have a hold over him. On production of the agreement under the Rules the plaintiff would have had to sign it within 14 days and the only ground on which the defendants could have avoided the contract would have been if he had failed to do so within that time.

If the plaintiff had changed his mind before receiving the vendors' notice to sign and return the formal agreement required by the Rules there is little doubt that the vendors would have held him bound by Ex. AB2 at least till 14 days had passed after their giving notice.

I think that it would be most reprehensible for vendors to be permitted to behave in this cavalier fashion with impunity before the expiration of 14 days from notice to sign the formal agreement and in this particular instance, even before the submission of any such document. There are sufficient sharks already infesting Singapore's territorial waters and a court of law is bound to do all that it can when opportunity arises to discourage their propagation on land in human guise.

I have already indicated at the last hearing that in the event of my deciding in favour of the plaintiff I did not consider this to be a proper case for the exercise of my discretion to grant specific performance. In my view damages should provide an adequate remedy. I am prepared to consider submissions on the quantum of damages I should award.

[After hearing counsel's submissions on the quantum of damages the learned judge assessed and awarded to the plaintiff $12,000 as damages. Judgment accordingly with costs.]

Judgment for the plaintiff.

Solicitors: *Mallal & Namazie; Edward Y. T. Loke.*